

AMENDED IN ASSEMBLY JUNE 12, 2007

AMENDED IN SENATE MARCH 20, 2007

SENATE BILL

No. 183

Introduced by Senator Corbett

February 6, 2007

An act to amend Section 15657.3 of the Welfare and Institutions Code, relating to elderly and dependent adults.

LEGISLATIVE COUNSEL'S DIGEST

SB 183, as amended, Corbett. Elderly and dependent adults: civil actions.

Existing law provides that the department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abduction or abuse of an elderly or dependent adult. Existing law further provides that, upon petition, after the death of the elder or dependent adult, the right to maintain an action shall be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate.

This bill would instead provide that after the death of the elder or dependent adult, the right to *commence or* maintain an action shall pass to *the personal representative, and if there is no personal representative,* to an intestate heir whose interest may be affected by the action ~~or~~, to the decedent's successor in interest, *as defined, or an interested person, as defined*, subject to specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 15657.3 of the Welfare and Institutions Code is amended to read:

15657.3. (a) The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abduction, as defined in Section 15610.06, or the abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff prior to the initiation of the action for abuse.

(b) The department of the superior court having jurisdiction over probate conservatorships shall not grant relief under this article if the court determines that the matter should be determined in a civil action, but shall instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief pursuant to this article if the court determines that the civil action was filed for the purpose of delay.

(c) The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult.

(d) (1) ~~Subject to paragraph (2) of this subdivision and paragraph (1) of subdivision (e),~~ after the death of the elder or dependent adult, the right to commence or maintain an action shall pass to the personal representative of the decedent. If there is no personal representative, the right to commence or maintain an action shall pass to ~~either of the following~~ *any of the following, if the requirements of Section 377.32 of the Code of Civil Procedure are met:*

(A) An intestate heir whose interest is affected by the action.

(B) The decedent's successor in interest, as defined in Section 377.11 of the Code of Civil Procedure. ~~As used in this subparagraph, "successor in interest" does not include a creditor who is not an heir or beneficiary of the decedent.~~

~~(2) If there are two or more persons who claim the right to commence or maintain an action under this paragraph, a petition shall be filed with the court to determine to whom that right shall pass. An affidavit or declaration containing the information specified in Section 377.32 of the Code of Civil Procedure shall be submitted to the court with the petition. The court may then~~

1 issue appropriate orders as described in Section 377.33 of the Code
2 of Civil Procedure.

3 ~~(e) After the death of the elder or dependent adult, a person~~
4 ~~described in paragraph (1) of subdivision (d) may commence or~~
5 ~~maintain an action where there is a personal representative~~
6 ~~suspected of abuse of an elder or dependent adult or who cannot~~
7 ~~be expected to commence an action against himself or herself. A~~
8 ~~person commencing an action under this subdivision shall allege~~
9 ~~the conflict of interest of, or the suspected abuse by, the personal~~
10 ~~representative in the complaint and file an affidavit or declaration~~
11 ~~as described in Section 377.32 of the Code of Civil Procedure. A~~
12 ~~personal representative may challenge the allegations of abuse or~~
13 ~~conflict of interest by filing his or her affidavit or declaration~~
14 ~~pursuant to Section 377.32 of the Code of Civil Procedure. The~~
15 ~~court may then issue appropriate orders as described in Section~~
16 ~~377.33 of the Code of Civil Procedure.~~

17 *(C) An interested person, as defined in Section 48 of the Probate*
18 *Code, as limited in this subparagraph. As used in this*
19 *subparagraph, “an interested person” does not include a creditor*
20 *or a person who has a claim against the estate who is not an heir*
21 *or beneficiary of the decedent’s estate.*

22 *(2) If the personal representative refuses to commence or*
23 *maintain an action or if the personal representative’s family or*
24 *an affiliate, as those terms are defined in subdivision (c) of Section*
25 *1064 of the Probate Code, is alleged to have committed abuse of*
26 *the elder or dependent adult, the persons described in*
27 *subparagraphs (A), (B), and (C) of paragraph (1) shall have*
28 *standing to commence or maintain an action for elder abuse.*
29 *Nothing in this paragraph shall require the court to resolve the*
30 *merits of an elder abuse action for the purposes of finding that a*
31 *plaintiff who meets the qualifications of subparagraphs (A), (B),*
32 *and (C) of paragraph (1) has standing to commence or maintain*
33 *such an action.*

34 *(e) If two or more persons who are either described in*
35 *subparagraphs (A), (B), or (C) of paragraph (1) of subdivision*
36 *(d), or a personal representative claim to have standing to*
37 *commence or maintain an action for elder abuse, upon petition or*
38 *motion, the court in which the action or proceeding is pending,*
39 *may make any order concerning the parties that is appropriate to*

- 1 *ensure the proper administration of justice in the case pursuant*
- 2 *to Section 377.33 of the Code of Civil Procedure.*
- 3 (f) This section does not affect the applicable statute of
- 4 limitations for commencing an action for relief for abuse of an
- 5 elderly or dependent adult.